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## **WRONG BY CONVENTION<sup>1</sup>**

Abstract: Some acts (*mala in se*) are wrong prior to any social prohibition (e.g. murder). Other acts (*mala prohibita*) are wrong only once socially prohibited (e.g. traffic violations). This paper considers certain obligations of care that parents owe to their children and children to their parents. Violations of these familial obligations are like paradigm *mala prohibita* in that they are wrongs created by social convention. But, it is argued, they are unlike paradigm *mala prohibita* in that their prohibition is not justified merely by the desirable consequences of prohibiting them but also by the value of the prohibition itself.

A familiar part of legal lore is the distinction between two kinds of wrong. Murder, assault, negligence etc. are *mala in se* i.e. wrong in themselves, regardless of whether the law prohibits them.<sup>1</sup> In banning them the law, criminal or civil, proscribes a wrong. By contrast, driving along the breakdown lane or parking in a plum spot are wrong only once prohibited – they are *mala prohibita*

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– and in banning them the law often (though not always) creates a wrong i.e. it makes such behavior genuinely blameworthy.<sup>2</sup>

We can apply this terminology to wrongs as such. Rules of everyday morality, etiquette, of friendship and family life all characterize certain acts as wrongful. Lying, failing to visit your mother in hospital, jumping the line in the store and not responding to a dinner invitation are none of them illegal but are often genuine wrongs and appropriate objects of blame. Amongst these wrongs, we may distinguish those already blameworthy prior to any social prohibition from those blameworthy only because they are socially prohibited.

A *social prohibition* (or rule or convention) lays down how we are obliged to behave. The normative force of such a social prohibition is recognition-dependent. Where a social prohibition is recognized at least two things are true. First, a significant number of people are inclined to avoid the forbidden act and they are so inclined because a rule forbidding it has been recognized.<sup>3</sup> Second, a significant number of people are inclined to blame those who perform the forbidden act and they are so inclined because a rule forbidding it has been recognized. A great deal more could be said about the idea of a social prohibition but this will suffice for now. Though at least some laws are social prohibitions, there are many social prohibitions that are not laws and perhaps also genuine laws that are not in this sense social prohibitions. I shall feel free to use both legal and non-legal examples in what follows.<sup>4</sup>

This all raises the question as to exactly how (and under what conditions) the social prohibition of an act not otherwise wrong can make that act genuinely wrong, genuinely blameworthy.<sup>5</sup> Suppose queue jumping is a *malum prohibitum*. Prior to any social convention on the matter, there is nothing wrong with boarding the bus as quickly as you can (without using force etc.) and regardless of the order in which others arrived at the bus stop. Suppose that a significant number of people then recognise a rule which forbids those who arrived last to board first, that these people refrain from slipping on ahead because they think that such a convention is in force and they blame others for so doing. Under what conditions does the recognition of such a convention create a genuine *malum prohibitum*, rendering blameworthy an otherwise permissible act?

This question has received much attention in the philosophical literature. A good part of the answer must lie in the fact that recognition of the relevant convention will have desirable consequences, consequences that outweigh the costs of such recognition. There is a vigorous debate over what more is required. Perhaps the benefits and burdens created by compliance with the convention must be fairly distributed amongst the affected parties; perhaps the parties to whom the convention applies must also agree to shoulder its burdens or at least fail to decline its benefits. These are matters that cannot be resolved here.<sup>6</sup> I shall simply assume that such conventions do sometimes create genuine *mala prohibita* and that they do so in part because of the desirable consequences of their recognition.

My thesis is that the recognition of social prohibition on A-ing can also render A-ing wrongful because such a prohibition would be valuable *for its own sake*, valuable in a way which can't be explained purely by reference to either the pre-conventional wrongness of A-ing, or the desirable consequences of a prohibition on A-ing. We shall find that violations of social prohibitions valuable for their own sake constitute another sort of *malum prohibitum*, in some ways similar to paradigm *mala prohibita* and in other ways similar to paradigm *mala in se*. So the category of acts wrong only because prohibited in fact contains two rather different kinds of offence, a difference rooted in the underlying justification for the prohibition.

### **1. *Mala in Se* and *Mala Prohibita***

Paradigm *mala prohibita* are wrongs whose prohibition is to be justified not by the pre-conventional wrongness of the act prohibited but rather by the desirable consequences of its prohibition. The phrase 'desirable consequences' should be interpreted broadly. A desirable consequence is any consequence that counts in favour of the prohibition independently of whether the act prohibited is itself a wrong. A boost in social welfare or economic efficiency constitute desirable consequences but it might also matter that the prohibition can be fairly applied, that various rights will be vindicated and wrongs avoided by the imposition of the prohibition. The only considerations excluded from such a justification for prohibiting A-ing are those rights, wrongs and values that depend on the wrongfulness of A-ing itself.

Corresponding to the distinction just drawn there are two kinds of fault we might find with the present legal (or social) arrangements. On the one hand we might complain that they permit wrongful behavior (e.g. genital mutilation or even negligent driving). In so far as an activity is *malum in se*, it would often be appropriate for us to blame the wrongdoers even though their deeds are not socially prohibited. Alternatively we might complain that current arrangements permit behavior that ought to be forbidden even though it isn't currently wrongful. For example, in a society with a substantial number of motorcars, the flow of traffic ought to be regulated and parking in certain places should be prohibited. Nevertheless, driving and parking as you see fit (within reason) are not blameworthy until they are actually prohibited.<sup>7</sup>

Isn't an act that ought to be wrong already wrong? Not so. First, to say that something ought to be wrong is not to say that any individual or group is obliged to forbid it. Maybe no group or individual has the power so to do, maybe they have the power to forbid it and it would be good for them to exercise that power but they are not obliged to exercise it. Even if they are obliged to forbid, until they actually do so the act in question is not wrong. So while we can criticize a legal system that fails to regulate parking and blame those responsible for the system (if such there be), those who drive and park as they see fit should not (yet) be a focus of our indignation.

Paradigmatic *Mala Prohibita*

A notable feature of paradigm *mala prohibita* is that there is no virtue in prohibition besides the value of the consequences of prohibition. If the desired effect is better achieved without prohibition, so be it. The state often regulates parking not by prohibiting it but rather by offering motorists a license to park in return for a fee. Where parking is best regulated in this way, there is no case for prohibiting it. (Many would say the same of the choice between a volunteer army and national conscription: there is no point in using the law here if you can get a better result by paying volunteers to serve.) On the other hand, whether or not a ban on a *malum in se* is advisable all things considered, there is at least this to be said in its favour: the ban recognizes the blameworthiness of a certain act.

Another notable feature of paradigm *mala prohibita* is that the commission of such wrongs does not primarily involve the wronging of particular individuals.<sup>8</sup> Specific individuals may be wronged but, if they are, this is a by-product of the primary wrong 'against the system'. Suppose I drive along the breakdown lane of a freeway or dodge the draft or refuse to accept legal tender. Here particular individuals can be harmed or inconvenienced by my behavior and these individuals may thereby be wronged but, very often, by driving in the breakdown lane or dodging the draft, I wrong no one in particular. And if I do wrong someone by (say) refusing to accept legal tender, the inconvenience I have caused them is usually a wrong to them only because my act also breaches a desirable social prohibition.<sup>9</sup> Do all such violations wrong each member of the relevant community by imposing at least a small risk of harm on them? In fact one is often perfectly entitled to impose small risks of harm on other people (e.g. by driving in a lawful manner) as one is entitled to inconvenience them in

various ways (e.g. by parking in a spot that suits them better). The imposition of such a risk (or inconvenience) constitutes a wronging only when it involves the commission of a prior wrong, namely the violation of a desirable social rule.

Perhaps one wrongs society in general by not playing one's part in an important social institution like the monetary system or the system of national defense. Be that as it may, the contrast with paradigm *mala in se* is clear. To kill someone is primarily to wrong the victim: if this also involves the commission of an offence against society that is a further matter. By contrast, if a taxi driver refuses to give someone a ride because they can offer the driver only the local currency (rather than US dollars), that act wrongs them only because it breaches a desirable social rule.

It might be thought that even *mala prohibita* can primarily wrong individuals. Consider tort law. One might argue that the socially efficient way of allocating the costs of motor accidents is not to take the matter away from the courts and adopt a system of no-fault comprehensive insurance; rather in order to avoid the moral hazard caused by such insurance we should allow the drivers involved to make claims against one another for damages. According to this story, the rationale for tort law is grounded purely in a collective interest; we are *not* assuming that the relevant drivers are committing any pre-conventional wrongs requiring legal recognition. Still it might be argued that the promulgation of tort law *makes it the case* that some drivers wrong other drivers when they collide with them, namely where the law gives them a claim for compensation. Were this so, a normative system grounded purely in collective interests could generate



directed obligations after all and an act could be a wronging by convention even where the interests of the wronged individual were no part of the reason for its prohibition.<sup>10</sup>

I don't deny that the words 'wrong' and 'wronging' can in this way be linked to the creation and possession of various legal claims, powers and entitlements but my notion of wrongfulness is instead tied to the aptness of blame and my notion of wronging gives the wronged party a special relation to that blame. For example, wronged parties are often in a position to forgive a wrong done to them as third parties are not.<sup>11</sup> I doubt that on the moral hazard story the 'wronged' party bears a relation of the relevant sort to the tortious wrong. No doubt they can waive their claim for compensation but waiving a legal claim is quite different from forgiving a wrong. Furthermore if the plaintiff doesn't waive the claim and the other driver refuses to pay, the primary wrong is 'against the system' rather than against the individual. The individual to whom compensation is owed acquires special standing to forgive this behaviour only if some secondary wrong occurs e.g. they are harmed because the system does not bail them out and their car doesn't get repaired, a wrong which bears precisely on their individual interests. Harm to the social interest caused by a simple failure to obey the rules is indeed blameworthy but so long as the interest at stake is purely social, no individual (other than an official) has special standing to forgive this wrong and so no individual is (in my sense) wronged. The form of the wrong is determined by the form of the underlying interest.<sup>12</sup>

Socially Conditioned *Mala in Se*

I complete this section with two elaborations (or complications) of the distinction just drawn between *mala in se* and *mala prohibita*. These elaborations are needed because *mala in se* can be, as I shall put it, *socially conditioned*: their existence can depend upon features of the social context. For example, whether and to what extent I have a pre-conventional obligation to help someone often depends on what other people will do. I might be expected to take an injured person to hospital only if no one else will; should others stand ready to help (perhaps because they are hoping for a reward) I am no longer obliged to do so. Here all is well provided the person gets the help they need; so far as this obligation goes, who provides the help and why is not important. I'll call the wrong of failing to help here a *context-dependent malum in se*. Though its wrongfulness is a function of what others do, it remains *malum in se* because its wrongfulness does not depend specifically on whether there is a socially recognized obligation to help. It depends only on whether others will actually help, for whatever reason.<sup>13</sup>

By way of contrast, consider my duty to serve in the army. I'm not obliged to serve alone for that would be a meaningless gesture but suppose a sufficient number of people are showing up for duty; am I now obliged to show up also? That depends on exactly why others are serving. If they are conscientiously following a (worthy) social rule requiring military service, to dodge the draft could still be wrong of me even though my individual contribution still makes little difference and might even be mildly deleterious. Such dependence of the wrongfulness of not contributing on the recognition of a worthy social rule

indicates that draft dodging is here a *malum prohibitum* rather than a context-dependent *malum in se*.<sup>14</sup>

Now to the second way in which *mala in se* may be socially conditioned. In this case the recognition of a social convention has the effect of further specifying a pre-existing kind of wrong (i.e. a *malum in se*). The point of such a social rule is to tell you how to discharge a pre-conventional obligation rather than to create that obligation *ab initio*. I'll call such wrongs *conventionally specified mala in se*. There are at least two cases to consider.<sup>15</sup>

In the first case the actual specification is no better from the point of view of the underlying interests than other specifications that might have been chosen or have evolved. The classic example is the law requiring us to discharge our duty to drive safely by traveling on a specific side of the road. To subject your fellow motorist to a substantial and unwarranted risk of death and injury is a *malum in se*, one which wrongs the party on whom the risk is imposed. When you drive on the wrong side of the road you don't just do wrong, you wrong any individuals whom you put in danger. Here it is, I think, crucial to the case that you do impose some risk on someone by driving on the wrong side of the road. When you happen to know that the road ahead is deserted and it would (say) be slightly damaging to your car to drive on the correct (but poorly maintained) side of the road, then you wrong nobody in particular. Perhaps you do wrong by violating the rules of just and desirable social scheme but that is another matter.

In the second kind of case, the specific content of the conventional specification is sensitive to the underlying interests at stake. For instance, suppose we all have an obligation to help defend people who suffer life-threatening assaults (at least when we are not putting our own lives on the line etc.) This is plausibly a pre-conventional obligation but society may take a view about how this obligation is best discharged, perhaps insisting that we summon the police rather than wading in ourselves.<sup>16</sup> And if this insistence is justified (e.g. by the need to preserve social order) then the only permissible way to behave here would be to call the police. Now consider the wrong committed by someone who witnesses an assault and does nothing. This wrong has the hallmarks of a *malum in se*: there is virtue in prohibiting the wrong and the primary wrong is against the victim.<sup>17</sup> But social convention ensures that the wrong is not just a wrong of failing to help, rather it is a wrong of failing to help in a specific way, namely by calling the police. Should someone ignore the rules and wade in, they are still in the wrong, though their offence is now no longer a *malum in se* against the victim; it is (primarily) a *malum prohibitum* ‘against the system’.

Having in this section introduced two ways of justifying a social prohibition – those which appeal to the undesirability of the act prohibited and those which appeal to the desirable consequences of its prohibition – I want in the rest of the paper to argue that the force of some prohibitions cannot be accounted for in either fashion. We need a third element in the mixture to explain the obligations that arise out of the special relationships we form with particular people. As I shall urge, these obligations create *mala prohibita* that are, in some respects, more similar to *mala in se* than to the *mala prohibita* so far considered. I’ll first

illustrate these points with a discussion of familial relationships before drawing some more general morals in the final section.

## **2. Familial Obligations**

Any society must have a system for rearing its young and caring for its elderly, and most human societies have done this through a specific institution: the family. The family raises some of the most important questions in social philosophy, most of which I am in no position to answer. Here I shall take it for granted that we can understand and apply terms like ‘family’, ‘parent’ and ‘child’; that we know, for example, that a child brought up in an orphanage is not being raised by a family whilst an adopted child is. I shall also take it for granted that this institution is, at least in many of its forms, good for us. It is of course perfectly possible to rear children outside a family in the way Plato recommended or to let them rear themselves like Rousseau’s noble savage but whatever the merits of these arrangements, there is also something good about raising children within a family structure.

I shall argue that the value of family life is often connected with the fact that parents owe certain things to their children and *vice versa*. My focus will be on *socially conditioned* familial obligations. These are obligations that parents owe their children and children owe their parents in virtue of occupying those roles but they are obligations which depend on features of the wider social context in which a given parent-child relationship is set. The focus of this section is on precisely how such social conditioning works and in particular on whether the

obligations in question are conventional, that is on whether they bind only once their validity is socially recognized. Perhaps not all familial obligations are thus socially conditioned: biological parents everywhere may have an obligation to feed their infants regardless of the wider social setting. Leaving this question open, I assume only that there are socially conditioned familial obligations and, in this paper, I try to explain how that works.

Ignoring a huge mass of normative material, I'll consider those rules specifying the period of time one is obliged to care for one's parents and for one's children, rules that are in large part social rather than legal. In my culture one cannot throw one's children out of the house aged 16 to spend one's income on world cruises, nor can one move one's elderly parents into a retirement home simply to save oneself the trouble of mowing their lawn for them. People who do this sort of thing would not be breaking any law but they would be seriously wronging their children or their parents. Exposing your children at birth might be wrong whatever the social context, like completely ignoring the plight of those who reared you, but asking your children to leave home at the age of 16 so you can live it up is another matter. Such parents are considered selfish and their children will feel wronged by their disloyalty but these wrongs are clearly socially conditioned and the same seems true of the requirement not to consign your elderly parents to the retirement home as rapidly as possible. For now I'll proceed on the assumption that these normative phenomena are not merely socially conditioned but also conventional and so the wrongs they create are *mala prohibita*. We'll reconsider the matter towards the end of this section.

In societies with strong family structures (call them 'Italian') able-bodied children are allowed to remain in the parental home at least until they are married.<sup>18</sup> The Italian elderly also expect to be offered a room in their child's house once they are no longer able to care for themselves and would feel wronged if asked to move into a retirement home. By contrast, in 'Britain' children may be required to leave home in their late teens or early twenties and most people do not feel obliged to share their home with elderly relatives. Confronted with the more individualistic social mores of the U.K., the Italians might regard these mores as appropriate given its different economic or demographic situation. But suppose they suspect that British social arrangements can't be justified in this way. How should they express their disapproval?

Given that the wrongs just mentioned are *mala prohibita*, the disapproving Italians shouldn't blame individual Brits for throwing unmarried children out of the house nor for consigning their parents to a home as soon as they can no longer take full care of themselves. If the Italians did so disapprove, the Brits could reply that such indignation rests on a misunderstanding of how family life works around here. British people do not expect to be housed until they are married etc. and so I am not wronging my unmarried children if I ask them to leave at the age of 18. The disapproving Italians should say not that I am actually wronging them but that what I have done *ought* to wrong them; they should blame the system not the individual. Where some individuals are responsible for the system, they can be blamed though, I take it, these familial mores are not down to any individual.

How should we decide whether such disapproval is called for? We might first look to the desirability of the consequences of various prohibitions. An irenic Italian allows that given the socio-economic conditions prevailing in the UK it makes sense to allocate the burdens of familial care differently. Since it is easier for young people to get a job and there is less pressure on them to marry, it makes more sense to throw them out prior to marriage etc. etc. A disapproving Italian might reply that such circumstantial variations are insufficient to explain why both parents and children are being left to fend for themselves, that a misguided individualism is preventing the establishment of a properly integrated form of family life, one whose imposition could be justified as an appropriate way of distributing the social burden of caring for young and old. On this view, acts that should be *mala prohibita* are not.

I reckon there is something missing from the reasoning of *both* the irenic and the disapproving Italian. They both tacitly assimilate the position of a family member in need of accommodation to that of a driver looking for somewhere to park. In some respects the cases are indeed similar. The driver has no 'natural' claim on a parking space any more than an Italian child has a 'natural' claim on a place in the parental home until marriage. In both cases, the question arises as to whether the best way of distributing the relevant benefits and burdens would be to give them a claim. And in both cases, a person harmed or inconvenienced by having some legitimate claim denied would feel wronged by the neglectful parent or the driver sitting on an expired meter. But there is also a huge difference. In the familial case, the wronging is grounded in a personal bond



between parent and child: specifically it is a wrong of *disloyalty*. Doesn't the value of this sort of inter-personal bond constitute a third element that is needed to explain and justify the institution of the family as it is found in both Britain and Italy?

I shall develop this suggestion further in the final section. For now, I want to establish that familial wrongs fail to fit any of the categories of wrongfulness laid out so far. We'll first contrast familial wrongs with the paradigm *mala prohibita* considered in the first section. Then we'll ask if familial wrongs can instead be treated either as context dependent or else as conventionally specified *mala in se*. Once these efforts are seen to fail, I'll propose that familial bonds take the form they do because they serve our normative interests.

### *Mala Prohibita?*

Recall the two features distinctive of paradigm *mala prohibita*. First, there is no virtue in prohibiting the act: if the sought-after effects are better achieved without it, the case for prohibition disappears. Second, they need involve no wronging of a specific individual and when they do, this is so only because the act is wrong in another way. I'll now argue that violations of socially conditioned familial obligations are not like paradigm *mala prohibita* in either respect.

As to the first, let's suppose for the sake of argument that it is best for society if those children who can take their elderly parents into their own homes once they are unable to care for themselves, that this is the fairest and most efficient

way of providing such care in Italy. This very result might be achieved by subsidizing domestic care or by rendering retirement homes prohibitively expensive. No doubt such measures are often justified and on precisely these grounds (as tax breaks for married couples are meant to reinforce the institution of marriage) but this cannot be the whole story. There is value in people taking care of their parents or their offspring as a point of loyalty and not just as prudent financial management. In having an institution embodying the relevant (non-legal) prohibitions, we serve this interest in being able to form such bonds of loyalty across the generations.<sup>19</sup> No doubt this isn't the only interest in play but it is crucial to explaining why the institution of the family takes the form that it does.

As to the second feature of *mala prohibita*, once I am obliged to do something as a point of loyalty, I am betraying someone should I fail and betraying them is a way of wronging them. And I am wronging them in this way even if they suffer no damage or disappointment because, unknown to them, someone else steps in to help. My obligations to take care of my children and of my parents are of this sort. Perhaps I also owe it to society to take care of them, otherwise I'll be putting an unfair burden on the taxpayer (or others) but the obligations I owe to my parents and to my children do not derive simply from whatever duty I owe to society. Should I neglect them, there is a wrong done *to them* that is primary and fundamental.<sup>20</sup> This is all quite unlike any wrong done to a customer whose local currency is refused: they are wronged (when inconvenienced) only because this currency is a desirable (and recognized) medium of exchange.

We can bring this point out by considering the workings of forgiveness in these cases. As already noted, a wronged party usually has the ability to forgive the wrong they suffer. If I throw my daughter out of the house aged 16 to save on the food bill and then come to regret my behavior, she may decide to forgive me for this. Once she has forgiven me, the primary wrong has been forgiven. Perhaps I ought also to seek the forgiveness of those who had to help her out but I need their forgiveness only *because* I need my daughter's forgiveness. It would be perverse for me to approach them first. By contrast, whilst a customer refused service might well appreciate an apology, they would be entitled to an apology only because some other wrong had been committed (a flouting of a worthy rule), a wrong which *they* were in no position to forgive.<sup>21</sup>

It might be suggested that such bonds of personal loyalty arise from the discharge of responsibilities that are fundamentally collective but whose fulfillment involves interacting with particular people. Suppose our society manages the care of its young along Platonic lines by requiring its citizens to spend time working in the Public Nursery supervising the children assigned to us. Suppose that, having discharged my responsibilities in the Nursery for several years, I stop showing up. No doubt I'd be wronging all by failing to play my part in the public system of childcare but wouldn't it be natural for the particular children in my care to feel that I let *them* down? And wouldn't this still be so were I immediately replaced by an equally effective carer? Perhaps but this observation won't solve our problem. Such special bonds arise only once I'm in the habit of discharging the more impersonal obligations imposed on me by the childcare system. The less conscientious I'd been about this, the less I'd be

wronging these particular children. I take it parental obligations are not like that.<sup>22</sup> Their personal focus is present prior to any history of discharge. For example, Italians don't owe it to their children to provide them with a home until marriage only because they have already conscientiously discharged the other responsibilities of parenthood. On the contrary, if they'd let their children down earlier on they might well have a *greater* responsibility to help them later in life.<sup>23</sup>

### *Mala in Se?*

In the light of all these difficulties, might we be better off treating violations of socially conditioned familial obligations as *mala in se*? There are at least two possibilities here. First, such violations may be context-dependent *mala in se*. In a developed industrial society children ought to have certain goods and services and if they fail to get them perhaps some parental *malum in se* has been committed.<sup>24</sup> I myself doubt that pre-conventional obligations of aid, even towards one's own children, can extend to providing them with a home until marriage and so forth: the interests of society are surely needed to justify the imposition of such burdens. A rich foreigner passing through the country would not be bound to ensure that our Italian child was housed until marriage even if this were no more trouble to them than taking an injured stranger to hospital. Still let us, for the sake of argument, suppose that children in the Italian socio-economic context ought to be supplied with a home until marriage. Even so this would not capture the relevant normative phenomenon. Italian parents feel obliged to house their children until marriage at least partly because they

suppose that this is something other Italian parents also feel obliged to do, because this is what happens in Italy. As we saw earlier, context-dependent obligations of aid are not sensitive to the motivations of others in the same way. Furthermore, Italian parents don't think that they are required to concern themselves with their adult children's accommodation only so long as others will not take care of the matter for them. On the contrary, it is important to the Italian parent that *they* ensure that their children are properly housed (if only by helping them to purchase their own home).<sup>25</sup> This is quite unlike the case of a context-dependent *malum in se* such as failing to take an injured stranger to hospital when there is nobody else around. Here the crucial thing is that they get to hospital, not who takes them there.

Secondly, one might instead suppose that the various (legitimate) systems of family care are all conventional specifications of an underlying natural duty of caring adequately for your children/parents. There are two ways of taking this suggestion. On the first, we assume that the underlying interests should leave us indifferent between various specifications of this natural duty and that British notions would be as legitimate in the economic, demographic (etc.) conditions of Italy as Italian notions, it is just that certain familial practices have embedded themselves in the lives of the Italians.<sup>26</sup> We should now ask why a particular Italian parent is required to bear these considerable costs merely because a practice of so doing has become prevalent in Italy. Is it that the practice has engendered certain expectations and that their children will be harmed or at least disappointed if these expectations are not fulfilled? But suppose you informed your Italian child that they would be asked to leave on their 18<sup>th</sup>

birthday, giving them plenty of time to make suitable arrangements etc. I can't see why *on this account of the matter* they would have been wronged<sup>27</sup>: at most there would be a 'wrong against the system' (as when you drive safely on the wrong side of the road). Yet any Italian children would likely feel that you had behaved badly towards them.

On a second interpretation, the conventional specification of parental obligation mimics the way in which our legal duty to call the police specifies the pre-conventional obligation to help defend victims of assault. Taken in this second way, this strategy of conventional specification creates an obligation with a mixed character. Some breaches of the obligation to help victims of assault by calling the police primarily wrong the victim. Other ways of breaching that obligation (e.g. by wading in yourself) primarily wrong all those who subscribe to the relevant social practice. By contrast, both the Brits and the Italians will regard a failure to care properly for one's offspring or parents as primarily a wronging of the relative concerned, as a form of personal disloyalty. They disagree about the extent of this obligation (about what constitutes appropriate care) but they agree in denying that any part of that obligation is owed primarily to society.<sup>28</sup>

Let's now give up on the idea that socially conditioned familial obligations prohibit *mala in se*. Can we accommodate both the intrinsic aptness and the personal character of family bonds whilst treating their breach as a *malum prohibitum*? I think we can.

### 3. Familial Obligations and Normative Interests

Many parents feel obliged to ensure (if they have the means) that those of their children who are capable of benefiting from a tertiary education receive one rather than spend all the available money on amusing and entertaining themselves. And these parents also think it important that *they* should help provide this education rather than (say) allowing an anonymous benefactor to do so for them. Why so? True it is a very nice thing to receive a university education and, we may suppose, it is a particularly nice thing to receive it as part of a long-term relationship of care. But why should parents feel *required* to provide their children with this very nice thing, that they would be blameworthy if they didn't? Perhaps their offspring can't play a full role in a modern society without a university education, making university not merely nice but essential. Even so that won't explain why many well-healed parents wouldn't be happy to let a benefactor provide.

Of course many parents *are* happy to let someone else provide, at least where that benefactor is society as a whole. A developed society needs a large body of citizens with a tertiary education. This isn't merely a worthy ideal; without such people, society cannot function properly and so, we may suppose, we are (collectively) obliged to ensure that a sufficient number of us receive the relevant education. Thus most university systems are at least partly financed by general taxation but the feeling remains that parents have a special responsibility to help their own offspring receive a tertiary education suited to the children's interests and tastes and not just the forms of it required to fulfill

social needs. If the state should fall short in this regard, parents often feel bound to step in and fill the gap. Why so? Neither the educational needs of their children nor the social need for an educated cadre entirely explains the nature and extent of parental obligations in this area.

Now suppose that people have normative interests, that normative phenomena can be good for them and in particular that it is in the interests of friends, family members and so forth to be bound to one another in various ways. For example, it is good for them if people are required by social convention to care for their parents or offspring as a point of loyalty. Given the desirability of such bonds, the family is one obvious context in which to situate a directed obligation to finance someone's education. This (and not *just* the child's educational interests or the social necessity of an educated work force) is the reason many of us are obliged to meet the academic needs of individuals with whom we have a certain connection.<sup>29</sup> And the *mala prohibita* these normative interests help to generate (by helping to justify the relevant conventional prohibitions) possess the very features for which we have been looking, namely the intrinsic aptness and interpersonal character commonly associated with *mala in se*.

Could we achieve the same effect by allocating to each citizen the responsibility of helping to finance the higher education of some randomly selected individual? Whatever the merits of this system, the creation of a deontic connection between a complete stranger and myself is not among its justifying virtues. As in the tort example that I considered in the first section, the case for saying I wrong this individual (rather than society as a whole) if I don't do my part is based



exclusively on the harm done to that individual by my defection. Once this harm is imagined away (perhaps I know someone else will come up with my contribution) the case disappears because no normative interest is in play. Our socially conditioned familial obligations depend upon the existence of such a normative interest, namely our interest in being bound to our family members. It is doubtless good for family members in particular to help one another in the relevant ways but that alone does not explain why they are *required* to take on such burdens, far beyond those owed to strangers and even to most friends. I answer that such a reciprocal obligation to help exists in part because being *obliged* to help has a distinctive value, at least between family members.<sup>30</sup>

### Normative Interests

In the remainder of this section I'll first clarify the notion of a normative interest and the role it plays in the explanation of various normative phenomena. I'll then address some doubts about whether it can help to explain the workings of the family in particular. My account involves two claims: (a) normative phenomena like rights and obligations can be good for us for their own sake and (b) where they are good for us in this way, this often explains why the relevant obligations bind us and why we have the rights that we do, at least once these rights and obligations are socially recognized.<sup>31</sup> Familial obligations bind precisely because such bonds are non-instrumentally good for us. Where they are not good for us in this (or some other) way, they fail to bind however much social recognition they have garnered: no one is obliged to pursue the family vendetta.

Let's start with (b). The fact that it would be good for both parents and children if the parents were bound to help pay for the children's tertiary education does not ensure that they actually are so bound until this obligation is socially recognized. The normative interest here is an interest in the recognition of the obligation and the obligation in which we have an interest does not exist until that obligation is recognized.<sup>32</sup> Furthermore there is likely more than one set of familial rights and obligations that would be good for us and so would bind us were they recognized and social convention gets to determine which of these normative structures is actually in force. The conventions in question may be part of the general social background or else might be characteristic of a given social group (or even a family tradition). Perhaps it is only 'people like us' who feel obliged to send our kids to university. In any case, we are not actually bound in a way that depends on our normative interests until at least some of us feel so bound.

Familial obligations of this sort stand in sharp contrast to whatever pre-conventional obligations parents and children may have towards one another. Suppose that a biological parent has a 'natural' obligation to feed its offspring, at least in infancy. The parent is bound to do this because of the infant's need to be feed, the parent's role in creating this need and their ability to satisfy it. Here the value of the obligation is beside the point. It may or may not be the case that it would be good for someone were this obligation to be recognized but the bindingness of this obligation depends neither on its value, nor on its recognition.<sup>33</sup> A parent is bound to feed their child simply because of the child's need for food and the non-normative facts about how that need arose. By

contrast, the form and the force of many socially contingent familial obligations depends on the fact that being so bound is good for both parent and child.

Turn now to (a). I have said that an obligation can be good for its own sake but I do not suppose that an obligation is a good (or a bad) thing regardless of the context or of its content. The socially conditioned obligations of family life, for example, are good and binding only because they arise in the context of a certain kind of relationship and because they oblige us to provide various forms of help and support. My point is just that the value (and so binding force) of these obligations is not a simple function of how much their imposition raises the probability of the actual provision of that aid. A social bond's value may be conditional on its being an obligation to help a family member without its being of value simply as an incentive for the provision of such help and support.

On this point obligation may be compared to things whose non-instrumental value is rather less controversial. Even though pleasure is good for its own sake, its value may still be conditional both on the value of its object and on the context in which it occurs. Perhaps there is no good for us in enjoying something bad (sadistic pleasure) or even in enjoying something good in an unsuitable context (relishing a witty remark on a solemn occasion).<sup>34</sup> Still pleasure has a value of its own over and above the value of the object of pleasure. We look for things to take pleasure in, things that serve our interest in pleasure. Similarly, human beings look for ways of binding themselves to other human beings.<sup>35</sup> Not just any bonds will do – these bonds need a sensible content and a suitable

setting – but, as I suppose, the good of being bound is not reducible to the value of whatever we are bound to do.

These facts about the value of obligation inform our attitudes to the family. Being bound to help one another is part of what we value in family relationships etc. and not just an unavoidable byproduct or an unfortunate presupposition of what truly matters.<sup>36</sup> To regret those obligations or even to regard them with indifference would be fail to appreciate a valuable aspect of family life. On this point bonds of loyalty are quite unlike, for example, obligations of reciprocity to other persons. When you (a stranger) do me a good turn and I am obliged to reciprocate, what explains the obligation is the (non-normative) benefits given and not the value of any obligation. To come to like the idea that I am bound to reciprocate is to want to be more than a stranger to you.<sup>37</sup>

## Objections

Some readers may be prepared to concede the truth of what I say about normative interests whilst doubting that it has much application to family life. Don't people want their relatives to care for them neither from self-interest nor from duty but rather out of love and affection? No one expects the general run of car drivers and shopkeepers to be motivated by the disinterested love of humanity but they do look for more than mere conscientiousness from their close relatives. I agree that *mere* conscientiousness of the shopkeeper sort seems inappropriate but conscientiousness may still have a worthy place in family life at least where it is a manifestation of (and often the only feasible manifestation

of) love. You are not expected to enjoy visiting hospitalized relatives, nor to relish moving your son's heavy furniture into their new house. Here acting out of loyalty or from a desire to be a good parent (and without obvious reluctance) is usually all that can be required of you. There is no simple dichotomy between the motive of love and the motive of duty.<sup>38</sup>

The idea that conscientiousness, in the context of family life, is always a poor motive remains plausible only so long as we think of obligation as an imposition, one grounded entirely in the interests of others or of society in general. I have proposed that being bound to other people can be good for us, can be something we should welcome as a positive feature of our lives and that this fact helps to explain the binding force of such obligations. Feelings of love and feelings of loyalty are different facets of relationships like parenthood and friendship, relationships that make many people's lives worth living. Given this, why suppose that experiencing such connections as bonds devalues them or highlights an unattractive aspect of them? I am not saying that we should be glad once things go wrong and close relatives call on us for assistance. Even the best of parents and children may have other things on their plate, may have been called upon once too often in recent weeks and so understandably feel less than pleased at being required to discharge their obligations. Still where the relationship is a good one, we should not regret the purely normative fact that *were* our close relatives to need us, we *would* be obliged to help (and *vice versa*).<sup>39</sup>

With normative interests now in play, we can see another way in which the Brits and the Italians might adopt an irenic attitude to each other's practices. Any difference in family structure, if it is to be normatively significant, must be grounded in some social or individual interest but the justifying interest might well be normative, might be an interest in a particular combination of rights and obligations. And why assume that in a given social setting only one such combination has something to be said for it? Think of the various forms of friendship that currently exist. Many are worthwhile in their own way despite the fact that they require quite different things of us (e.g. calling each other on our birthdays or not as the case may be). Why should all of these normative variations be traceable to differing socio-economic conditions or else be regarded as alternative specifications of a single 'natural' obligation grounded in some non-normative interest? They may simply register the plurality of normative goods. Just as there are different ways of being a friend, so being free to ask your children to leave home aged 18 or else being required to give them a home until marriage may be aspects of different but worthwhile forms of family life. On this hypothesis, these rights and obligations are good in their various ways because they are differently combined with other rights and obligations (e.g. with the obligation to house your elderly parents until death, rather than place them in a home), thereby serving multiple normative interests. We should be pluralists about normative as well as non-normative goods.

Such pluralism exists within societies as well as between them. For example, friendship takes many different forms and, in our society, people are largely free to choose the type of friendships they go in for.<sup>40</sup> There is rather less freedom in

respect of the form taken by family life. Families, like friends, vary in how close they are and in how much they expect from one another but society sets rather stricter limits on family life: you can't let your children run wild etc. This is in part because of the strong collective interest in the smooth functioning of the family and in part because one party to the relationship – the child – is relatively powerless.

Cross-cultural variation in familial norms may provoke the worry that Italians who might otherwise have chosen British forms of family life are being subject willy-nilly to Italian norms (and *vice versa*). Does such lack of choice affect the value of these relationships and the bindingness of their norms? Here I must confine myself to a narrowly negative point: the *mere* fact that you didn't get to choose whether you are subject to a system of conventional norms does not mean that you are not subject to them (in part) because of the value of being subject to them.<sup>41</sup> No doubt the value of *some* special relationships does depend on the fact that they are to a large extent freely chosen (e.g. many forms of friendship) but we should not conclude from this that no special relationship has the relevant kind of value unless we can enter it on our own terms.<sup>42</sup> This is especially obvious in the case of family relationships where the child has very little choice in the matter and yet is still expected to be a good Italian son or daughter for instance. Equally most of what Italian parents owe their children is not thought to depend on how much choice they had over whether to have children. The same may well be true of other forms of obligation e.g. those involved in neighborly relationships, where living in close proximity is often taken to have normative implications even though people usually don't get to

decide either what is required in their neighborhood or who their neighbors are. To return to the dissident Italian parent, where their problem is that Italian family life provides too little room for choice the complaint should be assessed on its merits but if their complaint is simply that they didn't completely control the terms on which they had a family then it has little force.

I have been considering obligations implicated in certain valuable relationships and I've argued that these obligations bind us because, in the context of those relationships, they are good for us. My observations on the value of obligation in the context of family life apply also to acquaintanceship, friendship, relations of hospitality, neighborliness etc..<sup>43</sup> An adequate account of all these forms of involvement will be out of reach until we acknowledge that each of them exists in part to serve our normative interests. The importance of 'distributive' concerns in grounding the relevant obligations may well vary from one type of relationship to another. Perhaps one's obligations to help one's neighbor are largely a product of the need to allocate social burdens in an efficient way, so that neighborly bonds will become looser as the state is able to take up the slack, whilst the content of obligations of friendship is less influenced by such considerations. Be that as it may we should furnish ourselves with the analytical machinery needed to deal with these complexities and variations. I've argued that we can't explain the conventions of family life and the obligations they generate simply by combining a vulnerable individual's interest in getting certain forms of help and support with society's interest in the rearing of its young and the care of its elderly. In this and other cases we must acknowledge



that individuals have a further (personal) interest in their normative situation:  
there are not two but three sources of wrongness.

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<sup>1</sup> I assume that not all wrongs are conventional. Those who think otherwise are invited to read this paper as an argument for the thesis that there are different kinds of conventional wrong.

<sup>2</sup> For a helpful examination of the distinction as applied to the law, see Anthony Duff, "Crime, Prohibition and Punishment" *Journal of Applied Philosophy* 19 (2002): 97-108.

<sup>3</sup> People are often mistaken about why they are obeying a rule and thus about whether the rule is, for them, a convention. For example, one may think one is following gender norms because gender roles are divinely instituted. For someone of whom this is true gender norms are not social rules but one can be wrong about one's motives and the process of social change may reveal the true basis of one's adherence to them.

<sup>4</sup> There are huge differences between legal and other social prohibitions. The latter tend to be vague both in what they require of us and in exactly whom they require it of. Obeying them is not usually a matter of consulting an explicitly formulated code, rather it involves using one's sense of what is appropriate, a sense one acquires by a process of imitation and habituation. I mean terms like 'rule' and 'convention' to cover such informal customs, usages, mores and practices though, for expository convenience I represent the conventions of family life (for example) as being more explicit and determinate than they actually are.

<sup>5</sup> Note the essence of social prohibition is the application of blame, not of punishment and so it is blame that needs to be justified. Legal punishment may be an expression of blame but if so, it is not the only such expression.

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<sup>6</sup> For further discussion, see John Rawls, *A Theory Of Justice* (Cambridge: Harvard University Press, 1999), 93-99 and 301-8; Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), 90-5; John Simmons, "The Principle Of Fair Play" *Philosophy and Public Affairs* 8 (1979): 307-37 and Thomas Scanlon, *What We Owe To Each Other* (Cambridge: Harvard University Press, 1998), 338-42.

<sup>7</sup> It might be argued that what ought to be so here is that every one (or enough people) come to *think* they are bound by parking regulations. After all it is their thinking this that has the desirable consequences, whether or not their thoughts are true. I would reply that, in the case of such conventional wrongs (pervasive) thoughts and feelings makes it so, at least where it is a good thing for the act in question to be wrong.

<sup>8</sup> Is this feature is shared by certain *mala in se*? Suppose we have a natural obligation to help the poor but are not obliged to help any specific individual. Here violation of this duty would not wrong anyone in particular. Perhaps there are pre-conventional wrongs that take this form but I shall ignore them here on the grounds that they could not provide a suitable model for the familial obligations considered in the next section.

<sup>9</sup> David Hume, *Enquiry Concerning The Principles Of Morals* Ed. Selby-Bigge (Oxford: Oxford University Press, 1975), 310-11. An interesting case is where I prevent someone from discharging a social role that they are obliged to discharge e.g. by disobeying a superior officer. The military organization and its constituent norms are (we may suppose) justified by their serving the public interest (rather than the interests of the officer). Nevertheless I do usually wrong the officer by disobeying them. In these cases, the basic wrong is against those

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whose interests the organization serves but there may be a derivative wrong against those who must discharge their own obligations within the organization and can do so only if I also discharge mine. For further discussion of this point, see Rowan Cruft, "Why Is It Disrespectful To Violate Rights?" *Proceedings of the Aristotelian Society* 113 (2013): 201-24, 217.

<sup>10</sup> This line of thought could be used to defend Rawls' theory of promissory obligation against Scanlon's objection that it can't account for the fact that when I breach my promise to you, the primary wrong is against you. See Rawls, *A Theory Of Justice*, 301-8; Scanlon, *What We Owe*, 316 and Michael Thompson – "What Is It To Wrong Someone?" in Ed. Smith, Pettit, Scheffler and Wallace *Reason And Value* (Oxford: Oxford University Press, 2004): 333-84, 339.

<sup>11</sup> For discussion of blame and wrongdoing, see David Owens, *Shaping The Normative Landscape* (Oxford: Oxford University Press, 2012), Chapter 2.

<sup>12</sup> Herbert Hart, *Essays On Bentham* (Oxford: Oxford University Press: 1982), 94-5. For at least some of the rights that we ascribe to individuals, the individual's interest in the matter generates a right mainly because the right also supports a collective good. For example, Raz argues that this is the case with the right to free speech Joseph Raz, *The Morality Of Freedom* (Oxford: Oxford University Press, 1986), 250-55. Nevertheless the speaker would not be wronged by restrictions on their speech unless their personal interests also gave us some reason to refrain from interfering with them Raz *ibid.*, 166.

<sup>13</sup> It might be argued that all apparent *mala prohibita* are in fact context-dependent *mala in se*, where the relevant context is set by social facts about how other people are likely to behave Ronald Dworkin, 'Taking Rights Seriously

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(London: Duckworth, 1977), 57-8. On this view there are no genuine *mala prohibita*, the wrongness of an act is never *constituted* by social convention, though social facts may influence the content of our obligations. This thought cannot survive the recognition of normative interests (see below).

<sup>14</sup> Another example: Rawls explains that we are obliged to keep our promises because we are obliged to play our part in a just and desirable system of social co-operation from which we have ourselves benefited. Yet Rawls also maintains that there is an obligation of fairness here only because others are disposed to keep their promises *from a sense of duty* Rawls, *A Theory Of Justice*, 305. If others keep their promises only for Nietzschean reasons (i.e. to develop their own will-power (Friedrich Nietzsche, *The Genealogy Of Morals* Ed. Ansell-Pearson (Cambridge: Cambridge University Press, 1994, 40) and not because they feel they owe us anything then we are not required to keep our own promises on grounds of fairness, even though we do benefit from others' fidelity to their promises.

<sup>15</sup> For helpful discussion of conventional specification, see Scanlon, *What We Owe*, 338-42, John Finnis, *Natural Law And Natural Rights* Second Edition (Oxford: Oxford University Press, 2011), 285-6 and Duff, "Crime, Prohibition and Punishment", 102-3.

<sup>16</sup> Joseph Raz, *The Authority Of Law* (Oxford: Oxford University Press, 1979), 248 makes a related point but with an example not suited to my purpose here.

<sup>17</sup> I leave it open whether it would be good for this wrong to be *legally* prohibited.

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<sup>18</sup> The label 'Italian' apparently has some basis in the social realities of Italy ([www.theguardian.com/world/2012/sep/19/third-italians-live-with-parents](http://www.theguardian.com/world/2012/sep/19/third-italians-live-with-parents))

but the argument of this paper does not turn on how much.

<sup>19</sup> *Pace* Thomas Hobbes *Leviathan* Ed. Curley (Indianapolis: Hackett, 1994), 128 promises will not do the job since children can neither give nor accept binding promises.

<sup>20</sup> Niko Kolodny – “Which Relationships Justify Partiality? The Case Of Parents And Children” *Philosophy and Public Affairs*, 38 (2010): 37-75, 56-7. We cannot address this point by grounding the wrong involved in breaching a social prohibition on any individual's expectation that it will be complied with. The mere fact that most of the children in my social group will be receiving a high end computer game for Christmas (due to a very effective advertising campaign) does not mean that I am obliged to buy one for my children. On the other hand, there may be desirable conventions that are in force in my society, conventions which I am genuinely obliged to follow even though adherence is patchy and so they generate no firm expectation of conformity (e.g. good laws not generally obeyed and other conventions which engender blame and guilt more frequently than actual compliance).

<sup>21</sup> Thompson, “What Is It To Wrong Someone?”, 338-40 and 351-8, maintains that it is part of the practice of chess that cheating wrongs the person you are playing with, rather than chess players as such. Couldn't it similarly be part of our practice of family life that breach of a certain rule counts as a wronging of your parent or child? On the contrary, the rules of a practice acquire normative force from the interest that they serve. If chess serves purely non-normative

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interests and no such interest of the cheated party is affected by the cheating (the game is no less fun to them, no bet is lost and so forth), why insist that *they* are wronged by the cheating? Why suppose that *they* have anything to forgive? (I would argue that cheating *is* a wronging because chess serves normative interests).

<sup>22</sup> On this point, parental obligations may well differ from obligations of friendship for instance.

<sup>23</sup> Kolodny, "Which Relationships Justify Partiality?", 59-60 suggests that the personal focus of such quasi-parental responsibilities might derive from the simple fact that the orphanage (etc.) has assigned a specific child to you whether or not you actually discharge the responsibilities you are assigned. But the fact that child A has been bureaucratically assigned to my care does not mean that I'm wronging that child in particular if I don't follow through (rather than all those who do play their part in the system) unless child A is specifically harmed or put at risk by my neglect. Unlike wrongs of disloyalty, the primary wrong here is 'against the system'.

<sup>24</sup> John Stuart Mill, *Principles Of Political Economy* (Oxford: Oxford University Press, 1994), 31.

<sup>25</sup> The Italians may also feel obliged to house the children in their own home (as they might feel obliged to care for their young children themselves rather than hire a child minder) but that is another matter.

<sup>26</sup> Scanlon, *What We Owe*, 343.

<sup>27</sup> *Ibid.*, 347.

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<sup>28</sup> In a final effort to treat socially conditioned familial wrongs as *mala in se*, one might offer to explain the distinctively inter-personal character of such obligations by assimilating them to obligations of reciprocation. Do Italians have a greater obligation to care for their elderly parents than British people because Italians received more from their parents than Brits? It seems appropriate for individuals especially well treated by their parents to feel they should reciprocate by being generous to those parents in their old age and such obligations of reciprocation *may* be both pre-conventional and owed specifically to the parent but this suggestion does not explain why Italian parents are expected to do more for their offspring as well as for their parents: after all their children have (as yet) done no more for them. To meet this difficulty, we might instead regard duties owed to children as duties of *gratitude* rather than of reciprocation and model the wrong of ingratitude on what I call conventionally specified *mala in se*. Convention surely plays a big role in determining how it is appropriate to express gratitude and a sensible social practice might well require you to express your feelings about the benefits your parents bestowed on you by giving your own children the same start in life: you pay off your debt to them by paying it *on*. Provided the underlying wrong of ingratitude remains a *malum in se*, we thereby respect the fact that familial neglect is fundamentally a personal wrong and not a wrong ‘against the system’. Nevertheless, on this account, this wrong remains misdirected for even if your own children are a suitable focus for the gratitude that you owe your own parents, the parties primarily wronged by any expressions of ingratitude remain your benefactors (namely your parents) and yet neglect of your offspring primarily wrongs your children.



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<sup>29</sup> On this point I disagree with Raz: ‘the good justifying the duty to see to the education of one’s children, for example, is that they will receive an education, and that good is completely specifiable without reference to the duty’ Joseph Raz, *Ethics In The Public Domain* (Oxford: Oxford University Press, 1994) 41.

<sup>30</sup> Normative interests are also crucial to explaining certain normative connections between strangers (e.g. promissory obligations) but the value and force of these normative connections depends on their being under the control of both parties in a way that familial obligations (or the above randomly allocated obligations) are not. See the discussion of promise in Owens, *Shaping The Normative Landscape*, Parts 2 and 3.

<sup>31</sup> Owens, *ibid.*, Chapter 4.

<sup>32</sup> One might object as follows: since the recognition of an obligation consists in non-normative facts about people’s motivations, dispositions and attitudes, if the interest here is an interest in the recognition of the obligation then it is a non-normative interest after all, namely an interest in people’s feeling so obliged and so forth. I reply: first there are not two separate facts here – the obligations and the attitudes – rather the latter constitutes the former and second, I doubt there is any way of specifying the relevant pattern of attitudes, dispositions other than as that pattern of attitudes etc. which make it the case that we are so obliged.

<sup>33</sup> On this point, my view contrasts with that advocated by Nagel according to which we have certain natural rights because we are better off being creatures with the high moral status corresponding to such rights, regardless of whether or not those rights are socially recognized or respected. Thomas Nagel, “Personal Rights and Public Space” *Philosophy and Public Affairs* 24 (1995): 83-107, 92.

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<sup>34</sup> These claims are especially plausible when we are considering non-sensory pleasures.

<sup>35</sup> This should not be taken to imply that Italian mores are superior to British. Perhaps the bonds that bind the Brits together are situated outside the family. And there can, in any case, be too much of a good thing.

<sup>36</sup> 'I say unto you, that likewise joy shall be in heaven over one *sinner* that *repenteth*, more than over ninety and nine just persons which need no repentance' (Luke 15:7) Here sin *is* a disvalued precondition of a valuable repentance and so the angels' joy at repentance must be qualified by regret at the sin. By contrast good friends and relatives do not regret the bonds of loyalty.

<sup>37</sup> David Owens, "The Value of Duty" *Proceedings of the Aristotelian Society Supplementary Volume* 86: 199-215, 204.

<sup>38</sup> Jay Wallace, "Duties of Love" *Proceedings of the Aristotelian Society Supplementary Volume* 86 (2012): 175-98, 191. Obligation will usually become salient in your dealings with your family (as elsewhere) only when there is some prospect of breach. Familial duties do sometimes conflict both with other duties or else with the reasonable demands of self-interest and when this happens we must look to our obligations, conceived of as such.

<sup>39</sup> In this paper I am seeking to account for the binding force of socially conditioned familial obligations as such, not just those that govern the life of the modern bourgeois family. We shouldn't forget the household of the mediaeval peasant, the Puritan or even the great Lord and Lady living in different wings of their stately home. Notions about personal affection may well loom larger in our eyes than in those of people at other places and times, people who felt or feel no

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less tied to their parents and their children. I would argue that the bonds of familial loyalty can be good for people both in the context of the bourgeois family *and* in societies where the family is conceived of as primarily an economic unit, a school of life or even a miniature church. Our own culture of ‘affective individualism’ should not be allowed to define the very notion of family life. See Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London: Harper and Row, 1977).

<sup>40</sup> Some current forms of friendship require little of the friends: they just like hanging out etc. Raz says that such relationships are not really friendships (Raz, *Ethics In The Public Domain*, 41). I maintain only that familiar types of friendship are more committal, a fact that makes them valuable in a distinctive way.

<sup>41</sup> Unlike some of the examples considered in by Scanlon (Scanlon, *What Do We Owe*, 337-8 and 347-9), these familial norms are not merely optional ideals prevalent in a given society but which its members are entitled to ignore.

<sup>42</sup> See Samuel Scheffler, “Relationships and Responsibilities” *Philosophy and Public Affairs* 26 (1997): 189-209, 204-5, for an effective critique of radical voluntarism about the obligations involved in family life and other special relationships.

<sup>43</sup> Owens, “The Value of Duty”.